

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 16, 2001

PETITION OF MEMPHIS NETWORKX,)	
LLC FOR APPROVAL OF A)	DOCKET NO. 01-00091
TELECOMMUNICATIONS FRANCHISE)	
WITH THE CITY OF MEMPHIS)	

ORDER GRANTING PETITIONS TO INTERVENE
AND REFLECTING ACTION TAKEN AT
MARCH 8, 2001 PRE-HEARING CONFERENCE

This proceeding came before the Pre-Hearing Officer at a Pre-Hearing Conference held on March 8, 2001 pursuant to a Re-Notice dated March 2, 2001 to consider preliminary matters and establish a procedural schedule relating to the *Petition of Memphis Networkx, LLC for Approval of a Telecommunications Franchise with the City of Memphis* ("Petition") filed by Memphis Networkx, LLC on January 29, 2001. The Petition was filed pursuant to Tenn. Code Ann. § 65-4-107 which provides that the Tennessee Regulatory Authority ("Authority") may approve a franchise or privilege only after a hearing.¹

¹ Tenn. Code Ann. § 65-4-107 provides:

No privilege or franchise hereafter granted to any public utility by the state of Tennessee or by any political subdivision thereof shall be valid until approved by the authority, such approval to be given **when, after hearing, the authority determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest,** and the authority shall have power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require; provided, that nothing contained in this chapter shall be construed as applying to the laying of sidings, sidetracks, or switchouts, by any public utility, and it shall not be necessary for any such public utility to obtain a certificate of convenience from the authority for such purpose.

(emphasis added)

Background

This matter first came before the Authority during a regularly scheduled Authority Conference held on February 21, 2001, at which time the Directors voted unanimously to convene a contested case and appointed General Counsel to act as the Pre-Hearing Officer. The Authority assigned this matter to the Pre-Hearing Officer for the purpose of handling preliminary matters to prepare the case for a hearing.

The Authority issued a Notice on February 16, 2001 setting a Pre-Hearing Conference for March 2, 2001 and requiring the filing of petitions to intervene no later than February 23, 2001. Thereafter, due to scheduling conflicts, the Pre-Hearing Officer issued a Re-Notice scheduling the Pre-Hearing Conference for March 8, 2001. Both notices specified that the Pre-Hearing Officer would consider: petitions to intervene; issues to be addressed in this proceeding; setting a procedural schedule to completion, including a discussion of consolidating this docket with Docket No. 99-00909;² and the filing of stipulations/admissions of facts and documents.

Pre-Hearing Conference

The Pre-Hearing Officer convened the Pre-Hearing Conference, as scheduled, on March 8, 2001. The following parties entered an appearance on the record:

Memphis Networx, LLC - **D. Billye Sanders, Esq.**, Waller, Lansden, Dortch & Davis, Nashville City Center, 511 Union Street, Suite 2100, Nashville, TN 37219-8966 and **John Knox Walkup, Esq.**, Wyatt, Tarrant & Combs, 2525 West End Avenue, Suite 1500, Nashville, TN 37203;

Time Warner Telecom of the Mid-South, L.P. - **Charles B. Welch, Jr., Esq.**, Farris, Warfield & Kanaday, PLC, SunTrust Center, 424 Church Street, Suite 1800, Nashville, TN 37219-2327. **John M. Farris, Esq.**, Farris, Mathews,

² The Authority convened Docket No. 99-00909 to resolve the *Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications and Joint Petition of Memphis Light Gas & Water, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement Between MLGW and A&L Regarding Joint Ownership of Memphis, Networx, LLC.*

Branan, Bobango & Hellen, One Commerce Square, Suite 2000, Memphis, TN 38103, was also in attendance.

Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter - **Vance Broemel**, Esquire, Office of Attorney General, 425 5th Avenue North, Cordell Hull Building, Nashville, TN 37243-0500.

1. Petitions to Intervene

Petitions to Intervene were filed by Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom") on February 23, 2001 and by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") on February 28, 2001. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

The Pre-Hearing Officer finds that the Petitions to Intervene of Time Warner Telecom and Consumer Advocate are timely filed and have been properly served; substantiate that the legal interests of the intervenors may be determined in this matter; and demonstrate that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by allowing the interventions.

At the Pre-Hearing Conference, the Pre-Hearing Officer asked Memphis Networkx whether it objected to the Petitions to Intervene filed by Time Warner Telecom and the Consumer Advocate. With the exception of a question which was addressed to its satisfaction, Memphis Networkx expressed no opposition to either Petition to Intervene. Thereafter, the Pre-Hearing Officer granted both Petitions to Intervene.

2. Issues for Determination

The Pre-Hearing Officer discussed with the parties the issues presented to the Authority by the filing of the Petition. Memphis Networkx stated that the only issues for consideration were those relating to compliance with the requirements of Tenn. Code Ann. § 65-4-107. Time Warner Telecom proposed an additional issue of determining whether the franchise agreement complies with state and federal law, but did not articulate any such specific issues regarding the franchise agreement between Memphis Networkx and the City of Memphis. Given these comments, the Pre-Hearing Officer determined that if the Intervenor wished to propose issues for the Authority to consider beyond the statutory compliance, the Intervenor should articulate those issues by filing a response to the Petition no later than Friday, March 16, 2001.

3. Consolidation with Authority Docket No. 99-00909

The Pre-Hearing Officer addressed consolidating the present docket with Docket No. 99-00909. All parties were in agreement that the Authority should hear both dockets either simultaneously or in succession. No party expressed support for having these dockets consolidated. The Pre-Hearing Officer did not render a ruling on the issue of consolidation during the Conference. Upon taking this matter under advisement and reviewing the requirements for complying with Tenn. Code Ann. § 65-4-107, the Pre-Hearing Officer determines that the two dockets should not be consolidated. The hearing in this docket will take

place following the completion of the hearing in Docket No. 99-00909 presently scheduled for the week of March 26, 2001.

4. Pre-Filed Testimony

The parties discussed the filing of pre-filed testimony but no determination was reached. After reviewing the Petition, the Pre-Hearing Officer determines that the parties should submit pre-filed testimony prior to the hearing and hereby establishes the following schedule for filing: the Petitioner shall file pre-filed direct testimony no later than Wednesday, March 21, 2001 and may file rebuttal testimony, if necessary, no later than Monday, March 26, 2001. The Intervenors are not required to file direct or rebuttal testimony but if they choose to do so, they too must comply with the above due dates.

Procedural Schedule:

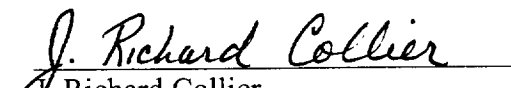
As discussed during the Pre-Hearing Conference and as further set forth in this Order, the Pre-Hearing Officer has established the following procedural schedule:

- If an Intervenor decides to file a response to the Petition, such must be filed **no later than Friday, March 16, 2001**;
- Stipulations, if any, shall be filed by **no later than Tuesday, March 20, 2001**;
- Petitioner shall file pre-filed direct testimony **no later than Wednesday, March 21, 2001** and may file rebuttal testimony, if necessary, **no later than Monday, March 26, 2001**;
- Intervenors are not required to file direct or rebuttal testimony but if they choose to do so, they must file pre-filed direct testimony **no later than Wednesday, March 21, 2001** and rebuttal testimony **no later than Monday, March 26, 2001**; and
- The Hearing in this matter is hereby set to begin following the completion of the hearing in Docket No. 99-00909 or on March 29, 2001 at 9:00 a.m., provided that the hearing in No. 99-00909 is completed.
- All the above filings are due no later than 4:30 p.m. on the date of the filing.

The Pre-Hearing Officer continues to urge the parties to enter into negotiations for the purpose of filing a Joint Stipulation as to uncontested facts and the admission of evidence so as to expedite the hearing in this proceeding.

IT IS THEREFORE ORDERED THAT:

- 1) Time Warner Telecom of the Mid-South L.P. and the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter are hereby given leave to intervene and participate in this proceeding as their interests may appear and receive copies of any notices, orders or other documents herein.
- 2) The parties shall comply with the procedural schedule as set forth herein.
- 3) The Hearing in this matter is hereby set to begin following the completion of the hearing in Docket No. 99-00909 or on March 29, 2001 at 9:00 a.m., provided that the hearing in No. 99-00909 is completed.
- 4) The proceedings in this docket shall proceed in accordance with the procedural schedule as set forth in this Order, unless otherwise amended.


J. Richard Collier
Pre-Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary